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No. 83-742

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

DAVID GENE BRADSHAW,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL APPENDIX

LEWIS PERRAULT, III
COUNSEL FOR PETITIONER
416 West 15th Street
Tulsa, Oklahoma 74119
(918) 583-6194

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 81-C-691-BT
TWENTY THOUSAND, FIVE HUNDRED NINETY DOLLARS (20,590.00) IN UNITED STATES CURRENCY, Defendant.	)	

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This civil forfeiture claim came on for trial to the Court sitting without jury on May 24, 1982, pursuant to notice and regular setting. After hearing the plaintiff's evidence, and considering the statements of counsel and the applicable legal authorities, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On August 16, 1981, City of Tulsa police officers Thomas Harris and J.K. Johnson stopped a 1979 Chevrolet pickup truck on a public street in the City of Tulsa, Oklaho-

ma, upon observing the truck bore an expired license tag of approximately eight months.

2. The truck was being driven by Terry Smith and David Bradshaw was a passenger riding in the front seat of the truck.

3. Upon being informed of the reason the vehicle had been stopped, the driver Smith advised the officers he was not the owner of the vehicle as the truck was owned by the passenger Bradshaw.

4. Officer Harris took Smith to the police unit for the purpose of running a radio identification check on the vehicle and Smith. At the same time, Officer Johnson remained with Bradshaw near the vehicle where Bradshaw suggested the vehicle's registration confirming his ownership might be located in the glove compartment. 1/

1/ Although the record is equivocal, it appears the claimant is stating the truck in question was owned by the claimant's father on the date of the arrest. (See David Gene Bradshaw's Proposed Findings of Fact and Conclusions of Law, p.1.) If this be so, it is unclear as to the basis for Bradshaw's instant challenge to the legality of the search of the vehicle.

It is a well established principle that the constitutionality of a search or seizure may be challenged

5. Bradshaw opened the glove compartment ostensibly to get the registration documents. Officer Johnson then observed a pistol lying therein and immediately removed Bradshaw from the vehicle, drew his pistol, caused Bradshaw to place his hands on the vehicle and then handcuffed Bradshaw.

1/ cont. only by one able to establish that his or her personal constitutional rights have been violated. United States v. U.S. Currency Amounting to the Sum of $20,294.00 More or Less, 495 F. Supp. 147 (E.D.N.Y. 1980), is instructive. In that civil forfeiture proceeding, the claimant challenged the legality of a search conducted by law enforcement officials that led to the discovery of the currency claimed as well as other items. The claimant originally denied he lived in the apartment searched, but for purposes of his asserted claim to the currency, he alleged he was in lawful possession of the apartment. When the claimant failed to introduce any evidence establishing his right of possession of the apartment, the Court concluded he was without standing to maintain his challenge to the legality of the search. 495 F. Supp. 153.

This principle would appear to apply in the case at bar. The claimant has offered no evidence relative to his ownership of the vehicle or his standing to challenge the search of the vehicle, and none is apparent from the record. As noted, the claimant's proposed Findings of Fact suggest the vehicle is owned by the claimant's father. It may fairly be concluded then this claimant has no standing to challenge the search which resulted in the discovery of the subject currency. Since the record is at best equivocal on the issue of the ownership of the vehicle, however, the Court finds the better procedure is to examine the matter on the merits as though standing may be present.

6. Officer Harris observed Officer Johnson's handling of Bradshaw. Officer Harris then drew his pistol, removed Smith from the police unit, and proceeded to assist Officer Johnson after learning of the existence of the pistol.

7. Two detectives of the Tulsa Police Department, Roger and Regina Jolliff, while passing by, observed Officers Harris and Johnson taking Smith and Bradshaw into custody with pistols drawn, and stopped to assist the officers.

8. Officer Johnson advised Regina Jolliff the suspects, Smith and Bradshaw, were being placed under arrest for operating a vehicle with an expired license tag and for possession of a concealed weapon. 2/ Johnson

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2/ With respect to the claimant's contention he was not subject to arrest for the offense of operating a vehicle with an expired license tag as he was not the driver, the Court notes the case of Ellis v. Fixico, 50 P.2nd 162 (Okl. 1935), wherein it stated:

> [W]hen the owner of an automobile driven by another becomes a passenger therein, in the absence of any agreement to the contrary, owner has the right, and it is his duty, to prevent, if possible, the driver

further advised Regina Jolliff he intended to tow and impound the vehicle because of the expired tag. Regina Jolliff then told Officer Johnson she would assist by inventorying the vehicle, whereupon she obtained a note pad from her car for that purpose.

9. Regina Jolliff commenced the inventory of the vehicle, and soon thereafter was joined by Officer Johnson. Detective Jolliff first examined a closed, zippered flight bag sitting on the center of the front seat of the vehicle. She determined the flight bag contained a large amount of United States currency, the $20,590.00 here in question. Thereafter, she discovered with Officer John-

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2/ cont. from operating the machine in a reckless and dangerous manner and in violation of the law. When he has the opportunity to restrain the driver and fails to take advantage of it, he should be held responsible for the consequences.

50 P.2nd at 164. See also Wagnon v. Carter, 539 P.2nd 735, 739 (Okl. 1975). Although the above-cited cases examine the owner-passenger's duty in the context of a tort action, the Court is troubled with its application in a criminal context. Accordingly, when Bradshaw represented himself to the arresting officer as the owner of the vehicle, the Court concludes the officers could have lawfully arrested Bradshaw for operating a vehicle with an expired license tag.

son approximately six pounds of a white powder substance later determined to be cocaine, a Schedule II controlled substance, in an unlocked briefcase sitting next to the flight bag in the vehicle. (Photographs of the flight bag and briefcase were admitted into evidence as PX-3 and PX-2 and 6, respectively.) Detective Jolliff and Officer Johnson also found several pills in the briefcase, some of which were later determined to contain methaqualone, a Shcedule II controlled substance. (See PX-1.) Also found in the course of the inventory were a "roach clip"[3/], the remains of what appeared to be marijuana cigarettes in the ashtray (later determined to be marijuana, see PX-1), and title documents indicating a Bradshaw to be the owner of the vehicle.

10. When Officer Johnson held up to view one of the many clear "baggie" packages of the white powder substance later determined

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3/ A "roach clip" is a device used to hold a marijuana cigarette.

to be cocaine, Bradshaw remarked to Officer Harris, "That's the best toot in town."[4/]

11. The pistol found in the glove compartment of the vehicle was a nine-millimeter Browning pistol. The pistol was not loaded, although a clip containing several rounds was found underneath the pistol. (See PX-6)

12. The suspects Smith and Bradshaw were arrested and transported to the police station; the vehicle was towed for impounding.

13. The subject currency was seized by agents of the Drug Enforcement Administration of the United States Department of Justice in the Northern District of Oklahoma. A warrant of arrest was issued for the defendant and the currency was duly taken into custody of the United States Marshal for the Northern District of Oklahoma.

14. The policy of the Tulsa Police Department relative to inventory searches of impounded vehicles is stated as follows:

4/ "Toot" is a term used in the drug culture to connote a substance to be snorted, or inhaled through the nose.

> The policy to this department is now, and has been in the past, that every motor vehicle impounded by officers of this department shall be thoroughly searched and the contents inventoried.
>
> This inventory shall ordinarily be made by the officer having the vehicle impounded and whenever possible the inventory should be made in the presence of the owner, operator, or person having possession of the motor vehicle.
>
> Valuable property such as jewelry, firearms, electrical appliances, and other easily removed property shall be removed from the vehicle and turned to the police property room for safe keeping.

(See PX-7).

15. The "street value" of the cocaine found in the vehicle was, at the time of the seizure, approximately $240,000.00 (96 ounces at approximately $2,500.00 per ounce).

16. It is common for large sums of cash to be carried in conjunction with illegal drugs either for good faith money or as secur-

ity in drug purchases, for use in purchasing drugs, or as a result of the sale of illegal drugs.

17. Bradshaw requests the subject currency be returned to his possession; Smith has disclaimed any interest therein.

18. Bradshaw offered no evidence at trial relative to either ownership of the currency or to an explanation of the currency's presence on the front seat of the vehicle. Nor has Bradshaw placed anything in the record at any time stating the money belongs to him or otherwise giving an indication as to the basis or source of his claim to the money.5/

5/ The record indicates the Government filed its complaint in Forfeiture on November 16, 1981, and the return of service shows David Gene Bradshaw was served on November 25, 1981. On December 7, 1981, the Government filed of record notice of the pendency of this proceeding and therein directed any person claiming an interest in the currency to file a claim with this Court within ten days thereafter and an answer to the complaint within twenty days after the filing of such claim. Fourteen days later, the claimant Bradshaw filed an answer to the complaint in forfeiture. At no time has Bradshaw filed a seperate claim for the currency or asserted his ownership of the same. In his veri-

5/ cont. fied answer, however, Bradshaw contends the search conducted by the Tulsa Police Department was illegal and Bradshaw thus

> "enters his claim for the defendant and demands that said money be returned to his possession."

Inasmuch as the Government never objected to Bradshaw's technical failure to file a claim within the prescribed ten-day period following publication of notice, the matter was set down for trial and proceeded accordingly.

The Court has found no authority indicating the filing of a claim within the time prescribed by the Government in a forfeiture proceeding is jurisdictional. Consequently, the Court concludes the matter is properly before the Court notwithstanding what appear to be technical defects in Bradshaw's filing of a claim. Bradshaw's failure to assert his ownership of the currency is not so easily overlooked, however. As noted, not only did Bradshaw not present any evidence demonstrating the basis of his claimed entitlement, but he also has failed to assert his ownership of the currency or to suggest the source of any ownership claim he might have. It might well be concluded the absence of a claim of ownership of the currency in question should be fatal to Bradshaw's claim. Nevertheless, since the matter proceeded to trial, the Court reviews Bradshaw's claim as though viable.

CONCLUSIONS OF LAW

Any Finding of Fact set forth above that may properly be characterized as a Conclusion of Law is incorporated herein.

1. The arrest of David Gene Bradshaw for carrying a concealed weapon in violation of 21 Okl.St.Ann.§1289.8 was lawful. Section 1289.7 of the Oklahoma Statutes Annotated does not create an exception to the general proscription against carrying concealed weapons, thus allowing a person to carry a concealed weapon in a motor vehicle at any time. Rather, Section 1289.7 merely provides for the lawful transportation of unloaded firearms in motor vehicles in accordance with other laws regulating the possession and carrying of firearms, such as Section 1289.8. Section 1289.6(1) of the same title provides a rifle or shotgun may be carried in a land-borne motor vehicle over a public highway when not chamber loaded and when in a locked compartment such as the trunk of an automobile. The clear negative inference to be

drawn from this section is that it does not apply to pistols; therefore, assuming a locked glove compartment comes within the meaning of Section 1289.6(1), the statute creates no exception for the carrying of a pistol concealed therein. In any event, the claimant having presented no evidence from which the Court could conclude the glove compartment was locked, the claimant could not come within the provisions of Section 1289.6(1) even if that section could be read to apply to pistols.

3. The search of the vehicle was a lawful inventory search performed in conjucntion with the arresting police officer's decision to impound the vehicle.[6/] See South Dakota v. Opperman, 428 U.S. 364 (1976).

6/ The Court concludes the search may also be justified as a permissible search incident to a lawful custodial arrest. Having concluded the arrest of the claimant Bradshaw was lawful, the search is directly controlled by the decision of the Supreme Court in New York v. Belton, 453 U.S. 454. In Belton, the Court stated:

> "[W]e hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger

4. The inventory search was conducted substantially in accordance with the policy statement of the Tulsa Police Department regarding inventory searches. The fact the arresting officer did not personally perform the inventory search and the fact the claimant did not observe the inventorying of the vehicle as recommended by such policy statement did not render the inventory search constitutionally defective, especially in

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6/ cont. compartment of that automobile.

It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach. Such a container may, of course, be searched whether it is open or closed, since the justification for the search is not that the arrestee has no privacy interest in the container, but that the lawful custodial arrest justifies the infringement of any privacy interest the arrestee may have. [Footnotes and citations omitted.]

3 U.S. at 460. In an abundance of clarity, the Court defined the word "container" thusly:

"Container" here denotes any object capable of holding another object. It thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like. Our

view of the fact the detective who intiated the inventory search did so by way of assisting the arresting officer. The fact Bradshaw did not personally observe the inventory search is of little significance here since Bradshaw has made no claim that any of the contents of the vehicle are missing, and therefore, the policy of having the putative owner present during the search to ensure all property is peoperly acounted for does not vitiate this inventory search.

6/ cont. holding encompasses only the interior of the passenger compartment of an automobile and does not encompass the trunk.

Id. at n. 4. In the case at bar, Bradshaw was under lawful custodial arrest and the search of the automobile was made contemporaneously with and as an incident of such arrest. The search was made of a container, that is, the flight bag, located within the passenger compartment of the vehicle. Hence, the search here was permissible under Belton. Although it is apparent to the Court the search here was intended as an inventory search, the fact the officers on the scene had learned of the existence of a pistol when Bradshaw opened the glove compartment would justify a further investigative search of the passenger compartment.

To the extent claimant relies on Robbins v. California, 453 U.S. 420 (1981), the Court notes the continuing vitality of that decision was severely undermined in the recent case of United States v. Ross, ___U.S. ___, 50 U.S.L.W. 4580, 4587 (1982).

5. Currency furnished or intended to be furnished in exchange for a controlled substance or used or intended to be used to facilitate a violation of the laws of the United States pertaining to controlled substances is subject to forfeiture under 21 U.S.C.A. §881 (a) (6). The currency herein comes within the provisions of said statute.

6. Cocaine is a Schedule II controlled substance under the laws of the United States.

7. The probable cause necessary in a forfeiture proceeding is a reasonable ground for belief of guilt, supported by less than prima facie proof but more than mere suspicion. United States v. One 1979 Mercury Cougar XR-7, 666 F.2nd 228, 230 n.3 (5th Cir. 1982). Probable cause deals with probabilities. These probabilities are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act. United States v. Eighty-Eight Thousand Five Hundred Dollars, 671 F. 2nd 293,

296 (8th Cir. 1982), citing Brinegar v. United States, 338 U.S. 160, 175 (1948).

8. The Government demonstrated probable cause and the nexus sufficient to support the forfeiture of the subject currency primarily on the basis of the following factors: (1) Agent Hignight's testimony it is common for large amounts of cash to be carried in conjunction with illegal drugs; (2) the fact the briefcase containing a substantial quantity of cocaine and drug paraphenalia and the flight bag containing the currency were found sitting next to each other on the front seat of the truck while being transported; (3) the fact the cocaine was segregated into small quantities in the "baggies", inferentially as a result of or in anticipation of a purchase or sale of the substance; (4) the presence of a pistol in the passenger compartment of the vehicle in which the cocaine and currency were discovered; and (5) the claimant's comment in reference to the cocaine, "That's the best toot in town."

In light of this finding and the failure of the claimant to rebut the Government's showing, the Government's burden is met. See United States v. Currency Amounting to the Sum of $20,294.00 More or Less, 495 F. Supp. 147, 153 (E.D.N.Y. 1980).

9. The currency found in the flight bag in the amount of $20,590.00 is forfeited to the United States Government pursuant to 21 U.S.C.A. §881 (a)(6).

A separate judgment will be entered in accordance herewith.

ENTERED this 10th day of June, 1982.

S/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 81-C-691-BT
TWENTY THOUSAND, FIVE HUNDRED NINETY DOLLARS ($20,590.00) IN UNITED STATES CURRENCY, Defendant.	)	

JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law filed this date, Judgment is hereby entered in favor of the plaintiff, United States of America, and against the defendant, $20,590.00 in United States currency, and against the claimant, David Gene Bradshaw; said sum of $20,590.00 is hereby forfeited to the plaintiff, United States of America. The plaintiff is to recover its proper costs herein, but the parties are to bear their own respective attorney's fees.

ENTERED this 11th day of June, 1982.

S/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA